

SETTLEMENT AGREEMENT AND RELEASE

This agreement is entered into by and between Kevin L. Wynegar and Lancaster County, Nebraska, (hereinafter referred to as the "parties") as of this ____ day of September, 2011. For the sole consideration of One Million Dollars (\$1,000,000.00), the receipt and sufficiency of which is hereby acknowledged, Kevin L. Wynegar hereby releases and forever discharges Lancaster County, Nebraska and Lancaster County, Nebraska, Sheriff's Department, Genesis Insurance Company, their employees, heirs, executors, administrators, agents, and assigns, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an automobile accident which occurred on or about the 23rd day of August, 2010 on or near Highway 34 in Seward County, Nebraska.

The parties further agree as follows:

1. Lancaster County will pay to Kevin L. Wynegar the sum of One Million Dollars (\$1,000,000.00) pursuant to the above paragraph. The disbursement of the One Million Dollars (\$1,000,000.00) will be distributed as follows: (a) \$75,000.00 has already been paid to Kevin L. Wynegar pursuant to the Agreement for Advanced Compensation as described in Paragraph 3 below, (b) \$825,000.00 will be paid to Kevin L. Wynegar upon the signing of this Agreement, (c) \$100,000.00 will be set aside in an interest bearing account for Kevin L. Wynegar and pursuant to this Settlement Agreement for purposes of Medicare as described in Paragraph 7 below.
2. Upon receipt of the funds as described in Paragraph 1 above, Kevin L. Wynegar will dismiss with prejudice, at his cost, the Complaint filed against Lancaster County, Nebraska and Lancaster County, Nebraska, Sheriff's Department in the District Court of Seward County, Nebraska at CI11-115.

Each party is responsible for paying their own attorney's fees. Lancaster County and its insurer shall not be responsible for any fees of Kevin L. Wynegar's attorneys other than those paid out of the settlement proceeds paid by Lancaster County or Genesis Insurance Company pursuant to this Agreement.

3. Both parties acknowledge that an Agreement for Advanced Compensation was entered into on the 11th day of January, 2011 by and between Lancaster County, Nebraska and Kevin L. Wynegar wherein Lancaster County advanced Seventy-Five Thousand Dollars (\$75,000.00) to Kevin L. Wynegar for partial

compensation for the damages that he sustained as a result of the automobile accident. Kevin L. Wynegar acknowledges receipt of \$75,000.00 in advanced compensation and Lancaster County is receiving credit for this advancement.

4. Kevin L. Wynegar hereby acknowledges total compensation from Lancaster County, Nebraska in the amount of One Million Dollars (\$1,000,000.00). Total compensation of One Million Dollars (\$1,000,000.00) represents the current maximum amount recoverable under the Political Subdivisions Tort Claims Act for claims arising out of an occurrence after November 16, 1985 pursuant to *Neb.Rev.Stat. §13-926* (Reissue 2007).
5. One Hundred Thousand Dollars (\$100,000.00) of the settlement referred to in Paragraph 1 above will be set aside in an interest bearing account and pursuant to this Settlement Agreement for purposes of Medicare. Kevin L. Wynegar hereby releases and forever discharges Lancaster County, Nebraska from any and all claims, demands, actions, causes of action, or suits of any kind of nature whatsoever with respect to Medicare. Kevin L. Wynegar hereby agrees to hold Lancaster County, Nebraska and the Lancaster County, Nebraska, Sheriff's Department and Genesis Insurance Company harmless from any and all benefits that Kevin L. Wynegar may receive from Medicare in the future.

Both parties acknowledge that this Settlement Agreement and Release is in no way to be construed as an admission of liability on the part of Lancaster County Nebraska or the Lancaster County, Nebraska, Sheriff's Department as both entities deny liability and enter into this Settlement Agreement in an effort to avoid litigation and additional costs.

6. Kevin L. Wynegar will provide Lancaster County, Nebraska with complete, accurate, and up-to-date information regarding Kevin L. Wynegar's Medicare eligibility and enrollment status within thirty (30) days from the execution of this Agreement. Kevin L. Wynegar also promptly will provide any and all information the County or its insurer, Genesis Insurance Company, requires to verify Kevin L. Wynegar's Medicare eligibility and enrollment status with Medicare and to facilitate and meet its reporting obligations under 42 U.S.C. § 1395y(b)(8). Such information may include, but is not limited to, Kevin L. Wynegar's full name, Social Security Number (SSN), Medicare Health Insurance Claim Number (HICN), gender, and date of birth; information regarding any alleged claim, accident, occurrence, act, error, omission, bodily injury, disease, loss or damages that are subject to the release herein; and information regarding any medical services or items provided to Kevin L. Wynegar and any payments or conditional payments made to or on behalf of Kevin L. Wynegar with respect to such medical services or items.

7. Kevin L. Wynegar represents and warrants that Kevin L. Wynegar is not Medicare eligible and/or enrolled and that Medicare has not (pursuant to 42 U.S.C. § 1395y(b) and the corresponding regulations) made any conditional payments for medical services or items provided to Kevin L. Wynegar and arising from or relating to any claim, accident, occurrence, act, error, omission, bodily injury, disease, loss, or damages that are subject to the release herein. Kevin L. Wynegar further represents that he has not applied for or received any type of Medicare benefits whatsoever and does not have a reasonable expectation of becoming a medicare beneficiary within 30 months from the date of this settlement. The parties agree that all representations and warranties made herein shall survive settlement.

Pursuant to 42 CFR §411.46 and §411.47, the Medicare intermediary manual, and the Medicare carriers manual, the parties to this settlement mutually agree that any rights or interests Medicare may have in the within settlement have been adequately considered and protected by allocating a specific amount of the settlement proceeds for a payment of Kevin L. Wynegar's "qualified" Medicare-covered medical expenses that he may incur in the future for treatment of his injury. Based upon the review of Kevin L. Wynegar's medical records, age, life expectancy, future cost projections, and based on historical treatment trends, the parties agree that \$100,000.00 of the total settlement will be allocated to pay for the anticipated future "qualified" Medicare covered medical expenses Kevin L. Wynegar may incur for treatment of the injuries he sustained in a motor vehicle accident on August 23, 2010.

The Medicare Set Aside account referred to in this paragraph shall be established, funded and the account administrator shall be designated within ten calendar days from the date of payment of the settlement proceeds to Kevin L. Wynegar. Lancaster County shall be notified of the identity and contact information for the set aside account administrator upon the payment of the funds.

The Medicare Set Aside Arrangement is only to pay for Medicare allowable expenses as determined in accordance with the standards established by the Centers for Medicare and Medicaid Services. All parties agree and understand that the only expenses to be paid from the Set Aside Arrangement account are those expenses that will be considered to be "qualified" Medicare covered medical expenses under the Medicare guidelines. If a question arises as to whether an expense is considered a "qualified" Medicare covered medical expense, the set aside account administrator of Kevin L. Wynegar's choosing will contact the Centers for Medicare and Medicaid Services to verify whether the expense can be classified as a "qualified" medical expense.

Kevin L. Wynegar agrees that he will not attempt to cancel or request a lump sum distribution from the Medicare Set Aside Arrangement account, and the sole purpose of the account is to pay for only those Medicare expenses which he actually incurs for the treatment of his injury for which Medicare would normally pay.

Kevin L. Wynegar acknowledges that should he incur medical expenses in the future, which would be denied by Medicare as being "non-qualified" medical expenses or by another governmental entity or private insurance provider, he cannot seek reimbursement for such expenses from Lancaster County or Genesis Insurance Company. The administrator of the Set Aside account (said individual or institution will be chosen by Kevin L. Wynegar) will be responsible for keeping records of payments made from the account.

If it is determined that medical expenses incurred in relation to the underlying injury are not Medicare allowable expenses, these expenses cannot be paid from the Medicare Set Aside Arrangement, and Kevin L. Wynegar will be responsible for the payment of the same. Kevin L. Wynegar acknowledges that he will be responsible for all "non-qualified" medical expenses he may incur in relation to his injury after of the date of approval of this agreement. Kevin L. Wynegar agrees to indemnify and/or hold harmless Lancaster County for any loss of Medicare benefits or for any recovery the Centers for Medicare and Medicaid Services may pursue. Kevin L. Wynegar further agrees to waive any and all potential future claims against Lancaster County and Genesis Insurance Company under the Medicare Secondary Payer Statute (MSP).

In consideration of the promises made by Lancaster County, Nebraska in this Agreement, including but not limited to the Settlement Amount to be paid by Lancaster County, Nebraska pursuant to this Agreement, Kevin L. Wynegar agrees that Kevin L. Wynegar shall be responsible for satisfying any future claims for reimbursement of conditional payments that may be asserted by Medicare, and that Lancaster County and Genesis Insurance Company shall have no obligation to satisfy any such claims for reimbursement.

8. Each Party has been advised by counsel before signing this Agreement and has relied upon the advice of such counsel with respect to all aspects of this Agreement, including but not limited to the Parties' respective obligations (if any) to reimburse Medicare or conditional payments. It is understood and agreed that no mistake of law or mistake of fact made by any Party, including but not limited to any mistake with respect to any obligation to reimburse Medicare for conditional payments, shall constitute a basis for rescission or reformation or render any portion of this Agreement, including but not limited to the release provisions of this Agreement, void or voidable.

9. Kevin L. Wynegar agrees to indemnify, hold harmless, and defend the County and its insurer, Genesis Insurance Company against any and all loss, cost, expense, or liability imposed upon or incurred by the County and Genesis Insurance Company arising from, relating to or concerning Medicare conditional payments or claims for reimbursement arising from or relating to any accident, occurrence, act, error, omission, bodily injury, disease, loss, or damages that are subject to the release herein.
10. The parties hereby declare and represent that no other promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Settlement Agreement and Release contains the entire agreement between the parties hereto, and that the terms of this agreement are contractual and not a mere recital.
11. Further, both parties acknowledge and agree that the terms of this Settlement Agreement and Release have been read and are fully understood and voluntarily accepted for the purpose of making a full and final settlement of any and all claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

KEVIN L. WYNEGAR

Kevin L. Wynegar

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2011.

Notary Public

LANCASTER COUNTY, NEBRASKA,
BY THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

Approved as to form and content this ____ day of _____, 2011.

Joe Kelly, Lancaster County Attorney

By: _____
Douglas Cyr, #16221
Deputy Lancaster County Attorney